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E.O. 12958: N/A

TAGS: [EINV](#) [KIDE](#) [TU](#)

SUBJECT: 2005 REPORT ON INVESTMENT DISPUTES/EXPROPRIATION
CLAIMS

REF: STATE 70014

[1](#)1. Claimant data:

Claimants A are U.S. citizens Victor and Kristy Bedoian. They filed a Privacy Act Waiver in 2001 allowing information to be shared with family, friends, members of Congress, the press, the general public and the following individuals: Sally or Pat Killoran, William Wolfe, Michael or Stacy Shelton. Victor Bedoian reported that he "technically" had a 95 percent share in the company involved in the dispute over the hotel property. However, there are six other partners in the venture.

Claimant B is PSEG Global/North American Coal, which has a contract for a coal-fired power plant that has not been implemented.

Claimants C are U.S. research-based pharmaceuticals companies.

Claimant D is Treador Resources Corporation.

Claimant E is Treador Resources Corporation.

Claimant F is Motorola.

[1](#)2. Begin text of 2005 report:

The United States is aware of (6) claims of U.S. persons against the Government of Turkey.

[1](#)1. a. Claimants A

b. 2001

c. In early 2005, a Van court dismissed a civil case initiated by Claimants A, in which Claimants A sought to annul the transfer of title to a hotel which they claim was sold without their knowledge or consent. In 2004, administrative courts decided against Claimants A in their suit to obtain a residence permit and an operating permit for the hotel. Claimants A are appealing the decision in the civil case in the Turkish courts, and are appealing the permit decisions in a case filed with the European Court of Human Rights. They have filed a complaint against the judge in the civil case, alleging that the judge ignored relevant evidence and that the judge was biased and may have been bribed. Claimants A had purchased and renovated a hotel and restaurant in Van for approximately USD 750,000 in 2001, but had been unable to operate it due to persistent police harassment and obstruction by local government authorities. Claimant has been denied a residency permit, which was used as the basis for denying operating permits for his hotel and restaurant.

[1](#)2. a. Claimant B

b. 2000 - 2001

c. In 2001, the Turkish Government cancelled 46 contracted (but not built) power projects based on the build-operate-transfer (BOT) and transfer-of-operating-rights (TOR) models. Only PSEG pursued arbitration. Turkey's constitutional court ruled in 2002 that the Turkish Government would have to either honor the contracts or compensate the companies involved. In line with the Constitutional Court ruling, the Ministry of Energy and the Treasury Undersecretariat released on May 24, 2002 a joint statement indicating that the GOT would seek as soon as possible a negotiated settlement with those BOT/TOR companies that have signed contracts. To date, the Government has not commenced negotiations with the companies or provided compensation. Claimant filed an international arbitration case with the International Center for the Settlement of Investment Disputes (ICSID) at Washington D.C under the bilateral investment treaty against the GOT in April 2002, claiming USD 300 million compensation for actual expenses and estimated profit loss since 1995. Claimant received a tribunal decision for the jurisdictional phase in June 2004. The hearing for determining monetary damage is scheduled for

April 2006 (sustentative-merit phase).

13. a. Claimants C

b. 2000

c. In January 2005, the Turkish Ministry of Health issued a regulation providing limited data exclusivity protection for confidential and costly pharmaceutical test data. However,

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the regulation falls short of WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) requirements by allowing generic copies to rely on the innovators, test data on applications filed between 2000 and 2004, and by limiting protection to pharmaceuticals with valid patents in Turkey. In its Special 301 submission, the Pharmaceuticals Research and Manufacturers Association claimed that 70 TRIPS-infringing copy products have been approved between 2000 and 2004, and that an additional 200 are in the Health Ministry review process. PhRMA claims that lack of data exclusivity cost its members in Turkey about USD 146 million in sales annually.

14. a. Claimant D

b. 1997

c. Since 1997, the Turkish Government has not allowed repatriation of profits (up to the amount of investment) by oil companies under Article 116 of the 1954 Petroleum Law, which protected foreign investors from the impact of lira depreciation. Two foreign petroleum companies, including Claimant D, obtained a Danistay (Council of State) decision upholding Article 116, which had been challenged by Turkish Government auditors in the Court of Public Accounts. However, the Danistay decision was reversed on appeal (by the Treasury), and the companies have asked for a reconsideration of this reversal, which is the last judicial recourse in Turkey. The Claimant has submitted its case to the European Court of Human Rights. Claimant is hoping that the pending new Petroleum law will include a provision for honoring past commitments.

15. a. Claimant E

b. 2004

c. Claimant E maintains that the Ministry of Energy Petroleum Affairs and TPAO (the state oil company) illegally canceled Claimant,s application for a Black Sea exploration license, in the zone adjacent to Claimant,s recent natural gas discovery. Claimant alleges that TPAO was illegally awarded the license after relinquishing for non-performance of drilling obligations. Claimant has taken the case to Turkey,s Danistay (Council of State), seeking to gain the license for which it applied and claiming discriminatory treatment, and therefore a taking of the rights that would have been bestowed under the license. Claimant claims that the Danistay is stalling on a decision pending enactment of a new petroleum Law.

16. a. Claimant F

b. 2001

c. Claimant lent nearly USD 2 billion to Telsim Mobil Telekomunikasyon Hizmetleri, a private firm. In 2001, Telsim defaulted on the loan. In 2004, the Turkish State Deposit Insurance Fund (TMSF) seized Telsim to recoup debts owed by its owners. Claimant won judgments against Telsim,s owners in U.S. and U.K. courts in 2003. Telsim launched several arbitration cases at the Zurich Chamber of Commerce in 2002, prior to the Turkish Government,s seizure of the company. Claimant filed a demand for arbitration against the Turkish Government at ICSID in Washington in October 2004.

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